



Final Regulation Agency Background Document

| | |
|--|---|
| Agency name | Board for Waterworks and Wastewater Works Operators |
| Virginia Administrative Code (VAC) citation | 18 VAC 160 -20 |
| Regulation title | Virginia Board for Waterworks and Wastewater Works Operators Regulation |
| Action title | Amend |
| Date this document prepared | December 29, 2005 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Board proposes to amend its regulations to create a conditional license.

Conditional licensure will require the applicant to meet all of the entry requirements for licensure except the requirement for experience operating a waterworks classified by the Virginia Department of Health (VDH) or a wastewater works classified by the Virginia Department of Environmental Quality (DEQ). Experience obtained at comparable non-classified facilities would qualify an applicant to sit for the Board's examination. Those passing the examination would be issued a conditional license. Upon completion of and documentation to the Board of one-half of the classified facility work experience required by the regulations, those holding a conditional license would be issued a license authorizing them to operate a classified facility.

Those holding conditional licenses will be required to pay the license renewal fee to maintain their conditional license; to complete continuing professional education (CPE) if they hold a waterworks conditional license; and to be subject to the disciplinary provisions of the Board's regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board for Waterworks and Wastewater Works Operators adopted a final Virginia Board for Waterworks and Wastewater Works Operators Regulation during its meeting on September 14, 2005.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2301 B. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) states that the Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

Section 54.1-201 (5) (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) empowers regulatory boards to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The imperative form of the verb “shall” is used, making the Board’s authority to regulate mandatory rather than discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the planned regulation amendments is to allow applicants that meet all of the Board's license qualification requirements except for experience at a classified facility to sit for the Board's examination. Those so qualified who do pass the examination will be issued a conditional license. A full license will be issued upon receipt of documentation of one-half of the classified facility experience from a conditional license holder. The public health, safety and welfare will benefit from a larger pool of qualified individuals that can more quickly become licensed to operate a classified facility and from the operation of non-classified facilities by those who have met the standards set by the Board's regulations.

The goal is to allow individuals who are technically qualified but who have not obtained experience at a classified facility operated under the oversight of the Virginia Department of Health (VDH) or the Virginia Department of Environmental Quality (DEQ) to sit for the Board's examination. The Board expects a disproportionately large number of operator retirements in the coming years and feels that this amendment will create a pool of qualified individuals that can become licensed after a relatively short

period of employment at a classified facility. Costs to the facilities (many of which are publicly owned and funded) to recruit replacements should be reduced as a result.

Conditional licensees operating non-classified facilities would be under the disciplinary authority of the Board. The Board can take action against a conditional license holder should his operation cause an adverse affect to the consuming public or to the classified facilities receiving his treated waste.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The definition section (18 VAC 160-20-10) is being amended to add four definitions to enhance the clarity of the amendments to the regulation text.

The license required section (18 VAC 160-20-74) is being amended to add a subsection stating that a conditional license shall not authorize an individual to serve as the operator of a classified facility.

A new section (18 VAC 160-20-95) is being added to establish the entry standards for a conditional license and the standards one holding a conditional license must meet to obtain a license authorizing him to operate a classified facility.

The maintenance of license section (18 VAC 160-20-104) is being amended to require conditional licensees to notify the Board in writing of changes in name or address, and to operate under the name in which the license is issued.

The renewal section (18 VAC 160-20-106) is being amended to provide for conditional licenses to be issued, expired, and renewed in the same manner as licenses.

The continuing professional education section (18 VAC 160-20-109) is being amended to require conditionally licensed waterworks operators to meet the continuing professional education (CPE) requirement as a condition of conditional license renewal.

The disciplinary section (18 VAC 160-20-140) is being amended to add conditional licensees as an entity under the disciplinary authority of the Board.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

No disadvantage to the public or the Commonwealth has been identified.

The primary advantages to the public are the availability of a pool of conditional licensees that are qualified to fill classified facility operator vacancies and the increased competency of conditional licensees operating non-classified facilities whose performance can impact on the public health, safety and welfare.

From time to time classified facilities that receive material from non-classified facilities are adversely impacted by errors in the operation of the non-classified facility. This proposal allows non-classified facilities to have their operators obtain a conditional license. Better non-classified facility operation should result and any act by a conditional licensee that fails to comply with the board’s regulations subjects the conditional licensee to the Board disciplinary authority.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

| Section number | Requirement at proposed stage | What has changed | Rationale for change |
|-----------------------|--|--|---|
| 18 VAC 160-20-10 | Definition of “conditional licensee,” “conditional licensure” and “conditional license.” | The terms were changed to “provisional licensee,” provisional licensure” and “conditional license.” | The board determined that the term provisional more accurately connoted the nature of the new license category. This change has been reflected throughout the regulation document. |
| 18 VAC 160-20-10 | Definition of “non-classified facility.” | Amended to add “located in Virginia.” | 18 VAC 160-20-80 already addressed experience obtained at a facility outside of Virginia. The amendment clarified the board original intent to consider experience only from non-classified facilities in Virginia. |
| 18 VAC 160-20-95 (B) | Established the manner of determining the category and class of examination a provisional license applicant may sit for and stated that the license would be issued when the applicant passed the examination. | Amended to delete the language compelling the board to issue a provisional license as soon as the applicant passed the examination and replacing it with language providing for the license to be issued when all applicable requirements have been met and satisfied. | The amended language more closely conforms with language in current 18 VAC 160-20-90 (D) (1). |

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

| Commenter | Comment | Agency response |
|--|--|---|
| <p>Clifton L. Parker, IV, P.E. Aqua Virginia, Inc. PO Box 6906 (2246-L Dabney Road) Richmond, VA 23230</p> | <p>Mr. Parker is concerned that individuals will become licensed that lack the experience currently required by the regulations.</p> <p>Applicants would be allowed to pass the written examination and become licensed with only half of the currently required experience. Suggests the Board may want to reduce the experience requirement for all applicants and states the proposal seems unfair at the least.</p> <p>An applicant with only experience working at a swimming pool with chlorine and filters or at an illegal water plant with filters that is not permitted will not have the same level or quality of experience that would be obtained at a classified facility. How would the Board determine whether experience obtained at a non-classified facility would, in fact, be equivalent to experience obtained at a classified facility? How much experience would be required?</p> <p>Why would the Board want to create a conditional license and what purpose would it serve? Feels the Board is creating a loophole.</p> | <p>The Board appreciates Mr. Parker’s concern.</p> <p>As proposed, conditional license applicants must provide documentation of the capacity and processes used by the non-classified facility as a part of the application. The documentation will be evaluated by DPOR staff in determining the license class that the applicant qualifies for. Experience limited to swimming pool operation may not qualify an applicant to sit for the examination.</p> <p>A similar procedure has been used for many years by DPOR staff to evaluate the experience of those currently licensed in another state that are applying for a Virginia license.</p> <p>The conditional license objective is to recognize technically qualified individuals who have obtained their experience at a facility other than one classified by the Commonwealth.</p> |
| <p>Edward Patrick Union Branch Baptist Church 3356 Union Branch Road Petersburg, VA</p> | <p>I am in support of the conditional licensure requirement.</p> | <p>The Board thanks Mr. Patrick for his expression of support.</p> |
| <p>Michael Stamper City of Radford Water Treatment Plant 20 Forrest Ave. Radford, VA</p> | <p>Mr. Stamper states he has both a Class I Waterworks Operator License and a Class I Wastewater Works Operator License and is employed as a water plant safety officer.</p> | <p>The Board appreciates Mr. Stamper’s concern.</p> <p>As proposed, conditional license applicants must provide documentation of the capacity and processes used by the non-classified facility as a part of the application. The</p> |

| | | |
|--|---|---|
| <p>24141</p> | <p>He expressed safety concerns that may arise when an individual only familiar with small well system use of HTH chlorine or liquid chlorine becomes licensed based on that experience and faces an emergency at a facility using chlorine gas. The proper emergency reaction to powder or liquid chlorine is entirely different from the proper emergency reaction for chlorine gas. HTH chlorine may be addressed with a broom and dustpan where chlorine gas requires personal protection equipment and other methods. Lives may be lost if the operator is not familiar with the proper procedure. The differences between 440 volt power industrial equipment and the 120 volt powered well system equipment were also expressed as a concern. Hazards from other improper procedures that may be used by inadequately experienced operators were cited as well.</p> <p>He feels this will be a lowering of the standards for licensure that will result in larger pool of operators but a less qualified pool and, thereby, a less safe environment.</p> | <p>documentation will be evaluated by DPOR staff in determining the license class that the applicant qualifies for. Experience at a facility such as Mr. Stamper describes would not qualify an applicant for a license to operate a facility using much more sophisticated equipment and processes.</p> <p>A similar procedure has been used for many years by DPOR staff to evaluate the experience of those currently licensed in another state that are applying for a Virginia license.</p> <p>The conditional license objective is to recognize technically qualified individuals who have obtained their experience at a facility other than one classified by the Commonwealth.</p> |
| <p>Douglas B. Fisher Chief Operator Henrico Water Treatment Facility 10111 Three Chopt Road Richmond, VA 23233</p> | <p>Mr. Fisher feels that operators should be required to have all of the requisite experience to hold a specific license. The proposal is similar to the limited license that was once held by operators years ago.</p> <p>He is opposed to issuing a conditional license to anyone working in the water or wastewater field.</p> | <p>The Board appreciates Mr. Fisher's concern.</p> <p>Each applicant for conditional licensure must have met the current full experience requirement at a non-classified facility that is fully comparable to a classified facility. The Board feels that obtaining one-half of the currently required experience at a classified facility, in addition to the non-classified facility experience, will result in an adequately qualified operator.</p> |

No comments were received during the Public Hearing held on August 11, 2005 and no comments were received on the Town Hall.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|-------------------------------|---|----------------------------|---|
| 18 VAC 160-20-10 | N/A | Silent | Adds definition of “classified facility” to distinguish classified facilities from non-classified facilities. |
| 18 VAC 160-20-10 | N/A | Silent | Adds definition of “conditional licensee” to add to clarity. This term was changed to “provisional licensee” when the final regulation was adopted as explained under “Changes made since the proposed stage” above. |
| 18 VAC 160-20-10 | N/A | Silent | Adds definition of “conditional licensure” or “conditional license” to distinguish from licensure. These terms were changed to “provisional licensure” and “provisional license” when the final regulation was adopted as explained under “Changes made since the proposed stage” above. |
| 18 VAC 160-20-10 | N/A | Silent | Adds definition of “non-classified facility” to distinguish them from classified facilities. |
| None | 18 VAC 160-20-74 B | Silent | Clarifies that a conditional licensee may not operate a classified facility. |
| None | 18 VAC 160-20-95 A | Silent | Sets the entry standards for a conditional license by requiring an application and allowing one to sit for the examination and receive a conditional license upon meeting all of the entry requirements for a full license except for the classified facility experience requirement. Specifies that the experience obtained at a non-classified facility must be comparable to a classified facility in size and in the treatment processes used. Limits the experience to that obtained while actually operating the facility and makes certain exceptions. |
| None | 18 VAC 160-20-95 B | Silent | Requires that applicants meeting the qualifications in subsection A sit for a specific examination and specifies that a conditional license will be issued upon obtaining a passing grade on the examination. This was changed to require all applicable requirements to be met before a license may be issued when the final regulation was |

| | | | |
|-------------------|--------------------|----------------------------------|---|
| | | | adopted as explained under “Changes made since the proposed stage” above. |
| None | 18 VAC 160-20-95 C | Silent | Sets standards for qualifying for a license after having obtained a conditional license. |
| 18 VAC 160-20-104 | N/A | Applies only to license holders. | Requires those issued a conditional license to comply with the maintenance of license requirements already required of license holders. |
| 18 VAC 160-20-106 | N/A | Applies only to license holders. | Requires those issued a conditional license to meet the same expiration, renewal and reinstatement requirements as one holding a license. |
| 18 VAC 160-20-109 | N/A | Applies only to license holders. | Requires those issued a waterworks conditional license to meet the continuing professional education (CPE) in the same manner as one holding a license. |
| 18 VAC 160-20-140 | N/A | Applies only to license holders. | Extends to conditional licensees the disciplinary authority that currently applies to licensees. |
| | | | |

Enter any other statement here

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Neither the current regulations nor the amendments thereto apply to businesses. They contain no compliance or reporting requirements for businesses and have no impact on performance standards for small businesses or businesses of any size.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No family impact has been identified.